

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:

THE APPLICATION OF UNION LIGHT, HEAT)
AND POWER COMPANY FOR ECONOMIC)
DEVELOPMENT TARIFFS)

CASE NO. 2004-00253

COMMENTS OF THE ATTORNEY GENERAL

The Union Light, Heat and Power Company ("ULH&P") has proposed three electric economic development tariffs. The proposals are for a Brownfield Redevelopment Rider (Rider BR), an Economic Development Rider (Rider ED), and an Urban Development Rider (Rider UR). These tariffs are being proposed for ULH&P and for other affiliates in other states in order to have consistent offerings in place in the full Cinergy territory.¹ These tariffs are permanent. They are not offered as pilots.

ULH&P acknowledges that it did not take the Commission's 1990 Order in Administrative Case 327 into account in proposing these tariffs, but nevertheless maintains that today's situation calls for published economic development tariffs rather than special contracts in order to be considered in an internet based market research era. ULH&P also asserts that the Commission should have no control over the utilization of these tariffs as their review of the tariffs in this case will stand in lieu of individual reviews of individual special contracts offered to individual customers.² The Attorney General ("AG") has intervened in this action and now presents his comments.

¹ ULH&P Response to Initial Staff Data Request, Item 1.

² ULH&P Response to Initial Staff Data Request, Item 1(a),

Obviously ULH&P and Cinergy consider the proposed tariffs to be in the best interests of the company and the shareholders or they would not offer them. Neither would they maintain an “Economic Development Department”³ if it was not in their best interest to do so. Therefore, it is clear that ULH&P and its shareholders expect to benefit from these discounted rate offerings. For the ratepayers, any benefit is indirect at best. It is based on the assumption that land utilization and added jobs are benefits to the Commonwealth and its constituents through their contribution to tax base and economics and that this, in combination with some contribution to the system costs by those on discounted rates, is to the benefit of the rest of the ratepayers.

EDR rates violate KRS 278.170. They encourage and allow a discount from the standard cost of service based rates for customers based on their contribution to economic development, a benefit to the state at large. In KRS 278.170 (2) and (3) the legislature has addressed the sorts of benefits to the state at large that are to be subject to the grant of free or reduced rates. Economic development rates are not among those included. Economic Development Rates should not be utilized at all.

If Economic Development rates were allowed by KRS 278.170, the question remains as to whether ULH&P’s proposed tariffs are appropriate. To the extent that the utilization of special contracts demands and utilizes a full demonstration of the validity of any discount rate and its contribution to system costs in addition to considering the merits of extending the rate to a customer, it is far preferable to one-size-fits-all, no-review tariffs.

Two of the three tariffs offered provide for a 50% reduction of the total bill. These two tariffs do not demonstrate that marginal variable costs are covered, much less that there is any contribution to fixed costs. This not only eliminates the most direct of the assumed benefits to the system presented by discounted rates – that at least some of the system cost is being covered

³ ULH&P Response to AG Initial Request for Information, Item 10.

by the discounted rate, thereby reducing the burden other ratepayers would have had absent that contribution - it is contrary to the Commission's current requirement under Administrative Case No. 327, p. 7-8. Currently, utilities must demonstrate that the discounted rate exceeds total short-run marginal costs, including both marginal capacity costs and marginal energy costs, as a prerequisite to discounted service.

Review by the Commission of the offered discounted rate at the time when it is offered is critical for ULH&P because it is currently in the process of transitioning from supplying its power needs via a full requirements contract to ownership of its own generation. Consequently, its marginal variable costs, including the marginal cost of capacity as well as the marginal cost of energy, will undergo a change. No review of the tariffs today can be sure that discounted rates offered under these tariffs after that transition occurs will meet the requirement that the rate recover marginal costs and make some contribution to fixed costs.

Currently, the Commission considers the power supply needs of the utility both at the time a discounted rate is offered and during its term.⁴ These tariffs do not provide for any analysis of the impact of the load to be served under the discounted rates on the power supply needs of the utility. This is wrong. Because ULH&P's newly acquired generation has a substantially greater peaking capacity component than most utilities it is doubly critical that the Commission examine the power supply needs of ULH&P with each discount offered to determine not just whether ULH&P has excess capacity, but also whether the addition of the load served at a discounted rate will cast other customers into higher cost for their power than they would have paid absent the load served on the discounted rate.

⁴ Administrative Case No. 327, pp. 4-5.

There is no provision in any of the tariffs for the recovery of customer-specific costs. This contrasts with the Commission's current requirement that EDR contracts include a provision for the recovery of such costs over the term of the contract.

Rider ED's job creation and capital investment criteria eliminate the flexibility now available under the individualized special contract.⁵ There is nothing to prevent free-riders or to allow the Kentucky Economic Development Cabinet to comment on whether discounted rates should be accorded to those who would seek service under the proposed tariffs.⁶ ULH&P apparently wants both the right to offer discounted service directly under this tariff, without timely Commission oversight, and the right to seek variances as it deems fit, with Commission oversight.⁷ Commission oversight of all offerings through the special contract process is more appropriate.

The Commission now recommends that special contracts provide for the receipt of service at standard rates for some period of time after the expiration of the economic development rate.⁸ ULH&P's proposed tariffs contain no requirement for the receipt of service for any period of time after the expiration of the discounts. The greatest benefit to the system occurs upon the expiration of discounted rates and the continuation of service under standard, fully contributing rates. A term of service should continue to be a prerequisite to the ability to receive discount rates.

ULH&P's proposed tariffs are presented for approval with no known eligible applicant present or in sight. ULH&P has neither knowledge of nor projection concerning the anticipated level at which any of the proposed tariffs will be utilized or the impact that usage might have on

⁵ Administrative Case No. 327, pp.10-12.

⁶ Administrative Case No. 327, pp. 13-15 and 23.

⁷ ULH&P Response to Initial Staff Data Request, Item 3(c).

⁸ Administrative Case No. 327, pp. 22-23.

the utility and its other customers.⁹ The sole purpose of the tariffs is to establish a uniform offering across all of Cinergy's affiliate service territories, territories that are not otherwise homogenous in terms of regulation or rates.

The proposed tariffs are not in the best interest of the Commonwealth or its ratepayers. The program constructed by the Commission in Administrative Case 327 still presents the better mechanism to determine that any economic development discount offered by a utility is in the interests of the Commonwealth and the ratepayers located in the utility service territory. This is particularly true for ULH&P given that its full requirements contract will soon end and that it is unclear what its rates will be under the new ownership provisions.

ULH&P's speculation that it may be passed over by internet researchers if its website contains no published economic development tariffs can be remedied by indicating on its website that economic development rates are established in Kentucky in conjunction with individualized special contracts.

Like the Commission, the AG believes that any economic development rates should be addressed on an individualized basis in the context of special contracts rather than by tariffs. Therefore, he does not believe that the informal conference requested by ULH&P for the purpose of discussing possible changes to the proposed tariffs would be fruitful.

Respectfully submitted,



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⁹ ULH&P's Responses to the AG's Initial Requests for Information, Items 2-15.

NOTICE OF FILING AND CERTIFICATION OF SERVICE

I hereby give notice that I have filed the original and ten true copies of the foregoing with the Executive Director of the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 this the 15th day of October, 2004, and certify that this same day I have served the parties by mailing a true copy, postage prepaid, to the following:

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